

ATF Inc.
Terms and Conditions of Sale

THE TERMS AND CONDITIONS SET FORTH HEREIN GOVERN THE QUOTATION, CONFIRMATION OF ORDER OR INVOICE FOR THE SALE OF PRODUCTS (“**PRODUCTS**”) AND/OR RELATED SERVICES (“**SERVICES**”) FROM ATF INC. (“**ATF**”) TO BUYER (“**BUYER**”) (COLLECTIVELY, THE “**AGREEMENT**”). ATF WILL NOT BE BOUND BY ANY TERMS OF A PURCHASE ORDER FROM BUYER OR OTHER DOCUMENT THAT ARE INCONSISTENT WITH THE TERMS HEREIN, AND ALL SUCH TERMS ARE HEREBY REJECTED. ACCEPTANCE BY BUYER OF THESE TERMS SHALL BE DEEMED TO HAVE OCCURRED UPON THE EARLIER OF (1) ISSUANCE OF A PURCHASE ORDER FOR THE PRODUCTS OR SERVICES, IRRESPECTIVE OF WHETHER SUCH PURCHASE ORDER INCLUDES CONFLICTING TERMS, (2) PAYMENT OF ANY PORTION OF THE PURCHASE PRICE FOR THE PRODUCTS OR SERVICES, (3) RECEIPT OF THE PRODUCTS BY BUYER, OR (4) USAGE OF THE PRODUCTS BY BUYER IN ANY MANNER.

1. **General:** The terms and conditions of sale contained herein apply to all quotations made by ATF, all purchase orders accepted by ATF, and all confirmation orders and invoices issued by ATF, irrespective of whether such quotations, purchase orders and confirmation orders and invoices are made on ATF’s form or the Buyer’s form, and whether or not such quotations, purchase orders or confirmation orders or invoices include terms which conflict with the terms set forth herein. Acceptance of Buyer’s order by ATF will be made only on the express understanding and condition that insofar as the terms and conditions in this Agreement conflict with any terms and conditions in any document provided by Buyer, the terms and conditions of this Agreement shall govern and shall constitute the sole and exclusive statement of the terms and conditions of the contract between ATF and Buyer.

2. **Prices, Taxes, Payment:** All purchase orders submitted by Buyer shall be in multiples of standard quantities as specified by ATF from time to time. Any written price quotation shall become voidable in ATF’s discretion unless accepted by Buyer within thirty (30) days, unless sooner revoked by ATF. All prices quoted, all orders accepted, and all billings rendered are exclusive of all federal, state and local withholding, excise, sales, use and similar taxes, tariffs, duties, fees, or charges imposed by any governmental authority on this transaction. Buyer will reimburse ATF for any such tax, tariff, duty, fee or charge, at the time of sale or thereafter, that ATF is required to pay. Unless otherwise specified by ATF, terms of payment are net thirty (30) days from the invoice date. In the event that payment is not received when due, any unpaid balance shall bear interest at the rate of 1.5% per month, or the maximum amount allowed by law, if lower. The amount of credit may be changed or withdrawn completely by ATF at any time. On any order for which credit is not extended by ATF, shipment or delivery shall require, at ATF’s election, cash with order (in whole or in part), or C.O.D. or sight draft attached to the bill of lading or other shipping documents, and all costs of collection shall be paid by Buyer. If any proceeding is brought by or against Buyer under applicable bankruptcy or insolvency laws, ATF shall be entitled to cancel any order by Buyer then outstanding.

3. **Delivery Date(s):** ATF will use commercially reasonable efforts to meet the delivery date(s) agreed upon by Buyer and ATF.

4. **Title and Delivery:** All Products that are shipped to a destination inside the U.S. will be shipped FOB Origin at ATF’s location to an agent of the Buyer, including a common carrier, notwithstanding any prepayment of freight by ATF. All Products that are shipped to a destination outside the U.S. will be shipped Ex Works at ATF’s location to an Agent of the Buyer, including a common carrier, notwithstanding any prepayment of freight by ATF. Buyer will be responsible for all shipping charges, and will reimburse ATF for all shipping costs ATF incurs. Risk of loss shall pass to Buyer upon the earlier of the delivery of the Products to (i) such common carrier or (ii) the Buyer, and Buyer shall provide whatever insurance against loss or damage it considers necessary once the Products leave ATF. In the event of any default by Buyer, ATF may decline to make further shipments without in any way affecting its rights under this Agreement.

5. **Notification of Shipment Errors:** Buyer shall have fifteen (15) days after delivery to notify ATF of any material shipping error, including, without limitation, shortages in the shipment, incorrect parts or other inconsistencies between the shipment and the enclosed packing slip or invoice. In the event of any such shipment error, Buyer must request and obtain ATF’s Return Authorization (RA) prior to shipping items back to ATF, and ship such Products in accordance with ATF’s then-current policies with respect to Products shipped in error. Buyer’s sole remedy and ATF’s sole liability with respect to nonconforming Products is limited to the remedy, if any, specified in Section 10. Except with respect to the foregoing shipping inconsistencies, all Products will be deemed accepted upon the earlier of delivery to (i) ATF’s carrier or (ii) the Buyer.

6. **Security Interest:** ATF reserves, until full payment has been received, a purchase money security interest in the Products sold. Buyer agrees to execute any document appropriate or necessary to perfect the security interest of ATF, or in the alternative, ATF may file this Agreement as a financing statement and/or chattel mortgage.

7. **Assignment:** Buyer shall not assign or transfer any of its rights hereunder, whether voluntary or by operation of law, without the prior written consent of ATF.

8. **Buyer’s Specifications:** Buyer acknowledges that ATF may supply the Products pursuant to Buyer’s specifications, or in the absence of such specifications, to applicable industry standards for the Products. Buyer agrees to indemnify, defend and hold harmless ATF and its officers, directors, employees, agents, successors and customers, from and against any and all claims, suits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses (“**Claims**”) for injury, loss or damage of any kind claimed by a third party, and caused by or arising from, or alleged to have been caused by or arise from, ATF’s compliance with Buyer’s specifications, or in the absence of such specifications, with applicable industry standards for the Products.

9. **Intellectual Property:** Any Intellectual Property owned or licensed by ATF and used by ATF in connection with the performance of its obligations hereunder shall remain the exclusive property of ATF and its licensors, as the case may be. Nothing in this Agreement shall be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term “**Intellectual Property**” shall include without limitation all of the following: (i) inventions, discoveries, patents, patents applications and all related continuations, divisional, reissue, utility model, design patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in-progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

10. **Warranty:** ATF warrants that the Products shall conform in all material respects to the specifications provided by Buyer to ATF and accepted by ATF, or in the absence of such

specifications, to applicable industry standards for the Products. If ATF and Buyer mutually agree that the Products do not satisfy the foregoing warranty, ATF shall promptly correct or replace such Products or credit Buyer for the price of any such Products for which Buyer has already paid the purchase price. THE REMEDIES SET FORTH IN THIS SECTION 10 CONSTITUTE BUYER’S SOLE AND EXCLUSIVE REMEDY AGAINST ATF RELATING IN ANY MANNER TO THE PRODUCTS OR SERVICES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, ATF MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS SOLD OR SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE PRODUCTS. Nothing herein shall be construed as providing or intending to provide ATF’s warranty to Buyer set forth above to any customers of Buyer. Buyer’s or Buyer’s customers’ storage, handling or use of the Products in a manner, which is not approved by ATF, shall void the aforementioned warranty.

11. **Tooling:** ATF shall retain all title, right and ownership in any tooling used by ATF in connection with the production of the Products. Nothing in this Agreement shall be deemed to grant Buyer any license or any other rights in such tooling.

12. **Marking:** Unless expressly agreed by ATF in writing, Buyer shall not remove, obscure or obliterate any of the patent, trademark or other proprietary notices incorporated in, marked on or affixed to the Products.

13. **Governing Law and Venue:** This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the State of Illinois, U.S.A., without regard to provisions on the conflicts of laws. Buyer and ATF consent to the exclusive jurisdiction of, and venue in, the state and federal courts located in Cook County, Illinois, U.S.A.

14. **Limitation of Liability:** ATF SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, EVEN IF ATF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST BUYER. ATF’S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM RELATING TO A SPECIFIC ITEM OR ITEMS INCLUDED WITHIN THE PRODUCTS SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC ITEM OR ITEMS TO WHICH THE CLAIM RELATES WITHIN THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM.

15. **Obsolescence:** In the event of any modification to this Agreement which causes finished Products or unfinished Products to become obsolete, Buyer agrees to pay to ATF the purchase price for the finished Products and to reimburse ATF for all costs incurred by ATF in connection with the production of the unfinished Products upon receipt of an invoice for such amounts from ATF. Upon receipt of such payment, ATF shall offer to deliver all such finished Products and unfinished Products to Buyer, and Buyer may accept or reject such offer. If Buyer accepts such offer, such finished and unfinished Products will be shipped by ATF to Buyer pursuant to the terms of this Agreement.

16. **Insurance:** Buyer shall maintain insurance coverage in amounts and types reasonably acceptable to ATF. Upon ATF’s request, Buyer shall provide Certificates of Insurance to ATF and shall have ATF named as an additional insured.

17. **Severability:** If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provision shall continue in full force and effect.

18. **Force Majeure.** Except for the payment of money, neither party will be liable for any failure or delay in performance under this Agreement due to any event beyond the reasonable control of the party whose performance is to be excused, including fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, labor dispute, strike, war, insurrection, riot, act of God or the public enemy, law, act, order, proclamation, decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement).

19. **Relationship of the Parties.** The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

20. **Entire Agreement:** This Agreement between Buyer and ATF in connection with the Products or parts thereof and/or Services constitutes the entire agreement between ATF and Buyer and supersedes all previous communications, representations and agreements, whether oral or written, between the Buyer and ATF with respect to the subject matter hereof. This Agreement may not be modified, supplemented, qualified, or interpreted except in writing signed by Buyer and ATF. The failure by ATF to enforce at any time any of the provisions in this Agreement will in no way be construed as a waiver of such provisions.